person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or

inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. 47 Stat. 70, 29 USCA, Sec. 104.

107. ISSUANCE OF INJUNCTIONS IN LABOR DISPUTES; HEARINGS; FINDINGS OF COURT; NOTICE TO AFFECTED PERSONS; TEMPORARY RESTRAINING ORDER; UNDERTAKINGS

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to thet effect . . .

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complaintant's property will follow;

(c) That as to each item of relef granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: PROVIDED, HOWEVER, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage

caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this secoion shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. 47 Stat. 71, 629 USCA, Sec. 107.

151. FINDINGS AND DECLARATION OF POLICY

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intert or the necessary effect of burdening or obscurng commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of

commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, o rthe prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is declared to be the policy of the United States

to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 49 Stat. 449, 29 USCA, Sec. 151.

152. DEFINITIONS

When used in sections 151-166 of this title—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, ruptcy, or receivers.
legal representatives, trustees, trustees in bank-

(2) The term "employer" includes any person acting in the interest of an employer, directly or individually, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151-163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or be-

cause of any unfair labor practices, and who has not obtained any other regular and substantially equivalent employnent, but shall not include any individual employel as an agricultural laborer, or in the domestic service of any family or person at his home, or any iidividul employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term 'labor organization" means any organization of anykind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or ir part, of dealing with employers concerning grievances, labor disputes, wages, rates o fpay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Coilumbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term 'affecting commerce" means in commerce, or burlening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or tle free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 158 of this title.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employerd and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 153 of this title.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934, (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 approved June 14, 1935. 49 Stat. 450, 29 USCA, Sec. 152.

157. RIGHT OF EMPLOYEES AS TO ORGANIZATION, COLLECTIVE BARGAINING, ETC.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their

own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. 49 Stat. 452, 29 USCA, Sec. 157.

160. PREVENTION OF UNFAIR LABOR PRACTICES—POWERS OF BOARD GENERALLY

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. 29 USCA, Sec. 160(a).

No. 14934

AUG 10
JOHN T. FEY,

In the Supreme Court of the United States

October Term, 1956

GREAT NORTHERN RAILWAY COMPANY, a corporation,

Appellant,

vs.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAYNOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID LABOR UNION, LEONA L. STEIN AND JOSEPH S. BOGARD,

Appellees.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

---

BRIEF FOR LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAINOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID LABOR UNION, LEONA L. STEIN AND JOSEPH S. BOGARD.

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STATUTES

Section 93-4204, R. C. M., 1947 2

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at *232 Fed. (2d) 358.*

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1956. Jurisdiction is invoked by petitioner under *28 U. S. C. 1254.*

QUESTIONS PRESENTED

Whether the complaint tendered sufficient legal grounds to warrant injunctive relief against the picketing involved.

STATUTES INVOLVED

The statutes involved are as set forth in the petition, page 3, and Appendix VII through XXI and in addition, *Section 93-4204,* Revised Codes of Montana, 1947, reading:

> "Injunction order—when granted. An injunction order may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the plaintiff;

3. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

4. When it appears by affidavit that the defendant during the pendency of the action, threatens, or is about to remove or to dispose of his property, with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition."

STATEMENT

The complaint alleges that defendants have picketed a mill and cabinet works at Helena, Montana, which the plaintiff railroad serves and that as a result:

". . . plaintiff's one switch crew located at Helena, Montana, because of their union obligations, have invariably refused to spot cars billed to and receive cars billed by said Foley's Mill and Cabinet Works* * *." (R. 7).

It then affirmatively appears by way of allegation, that the City Police of Helena, Montana are called to remove the picketers from plaintiff's railroad tracks, which they do. (R. 8). Monetary loss to the petitioner is stated, (R. 9), as well as delay in handling shipments. (R. 10). To the complaint, a motion to dismiss was tendered. (R. 17). The District Court, (R. 18), and the Court of Appeals, (Petition, Appendix III), found the complaint presented no case for

equitable relief under the ordinary rules applicable to the granting of injunctive relief.

ARGUMENT

The record in this cause does not present a situation that would move the discretion of this Court to grant the writ under any of the categories indicated in Section 5 of Rule 38 of this Court.

The allegations of the complaint establish that the refusal of the switch crews to cross the picket line comes about solely by reason of the switch crews own union obligation, (R. 7), and not by reason of any unlawful acts of the defendants.

Further, the complaint shows no grounds for injunctive relief even under the broad general rules as found by the Court of Appeals.

The District Court had no jurisdiction in any event to grant any relief. Jurisdiction was in the National Labor Relations Board under the allegations of the complaint, as determined by the Court in Local Union No. 25 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. The New York, New Haven and Hartford Railroad Company, 76 S. Ct. 227, U. S. That decision is controlling.

As to the irreconcilable conflict seen by petitioner between the provisions of the Commerce Act, the Norris LaGuardia Act and Labor Management Relations Act, the facts as al-

leged do not make necessary the resolution of that conflict in this proceeding. As stated by the Court of Appeals, petitioner is really seeking an advisory opinion to guide it in cases that may arise in the future where the conflict might exist.

We respectfully urge that the petition should be denied.

Dated this 27th day of July, 1956.

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